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SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

SHAWN FREEMAN, Petitioner, vs. ERIN GERLACH, Respondent	Case No.: FC2022-094055 **MOTION TO REQUEST A PROPER UCCJEA CONFERENCE PER A.R.S. 25-1001 TO 1067. AND STAY OF PROCEEDINGS**

Respondent / Mother is requesting the Maricopa County Superior Court schedule a UCCJEA conference that is held in accordance with Arizona law. The Honorable Judge Jackson took Jurisdiction over this case after a brief telephone call with a Judge in California. Neither party of the case was properly given notice of the UCCJEA conference. In an email from Judge Jackson's division, the parties were told they could observe the UCCJEA conference but stay muted. See Exhibit A. Respondent / Father didn't have the opportunity to attend the UCCJEA conference. There was no opportunity to be heard or present evidence to this Court or the Court in California. Neither the Judge in Arizona nor California had been provided with any facts of the case. This Court did not conduct the UCCJEA conference in the manner prescribed under Arizona statutes. See A.R.S. 25-1001 to 1067. The Court did not allow the parties an opportunity to present facts or legal argument before or during the UCCJEA Conference. The Court also didn't provide sufficient notice for the parties to prepare. Parties were given less than

6 hours' notice! Mother has raised this issue with the Court on multiple occasions but has been ignored.

Proceedings have continued to go on in this case without a proper jurisdictional ruling. Waiver does not apply in this instance because the child's best interests are at issue. See, *e.g., Nold V. Nold, 232 Ariz. 270, 273 ¶ 10, 304 P.3d 1093, 1096 (App. 2013)* (Waiver does not apply when it conflicts with a child's best interests.) Not only did the Court err in failing to make express findings on the record, but it also failed to conduct an evidentiary hearing on the A.R.S. 25-1037(B) factors. Due process requires this Court to provide an opportunity for testimony and evidence pertaining to statutory factors. Therefore, this Court could not have based its decision to assume jurisdiction on a proper review of those factors. In addition, the Court failed to make a proper record under A.R.S. 25-1010(D).

The Court shall allow the parties to submit information and shall consider all relevant factors, including:

1.) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

2.) The length of time the child has resided outside of the State.

3.) The distance between the court in this state and the court in the state that would assume jurisdiction.

4.) The relative financial circumstances of the parties.

5.) Any agreement of the parties as to which state should assume jurisdiction.

6.) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.

7.) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.

8.) The familiarity of the court of each state with the facts and issues pending litigation.

A parent is entitled to due process whenever a proceeding will determine his or her custodial rights to a child. Due process entitles a party to notice and an opportunity to be heard at a meaningful time and in a meaningful manner, as well as a chance to offer evidence. The manner in which the UCCJEA Conference was conducted is a gross deprivation of both parties' due process rights.

Furthermore, Father's continued unjustifiable conduct justifies this Court to decline Jurisdiction. Mother is not safe attending Court hearings in Arizona. Due to Father's extremely violent history, death threats and Father threatening to have Mother arrested, its unsafe for Mother to travel to Arizona. The extreme domestic violence Mother and the parties' child suffered at the hands of Father was never taken into consideration by this Court. In Fathers own motion to this Court, he states that Mother shouldn't have custody for allowing the child to witness domestic violence. Therefore, Father himself admitted to committing Domestic Violence. Domestic violence wasn't mentioned during the UCCJEA conference, nor was it in the temporary order issued by this Court. This Court allowed the parties to bypass the required mediation because of Domestic Violence. Yet, significant Domestic Violence has been ignored by this Court. This Court has not entered any orders attempting to protect Mother or Child. Instead, the Court continues issuing orders contradictory to Arizona law.

Father has lied on verified pleadings filed with this Court and lied under oath. Father submitted fabricated evidence to this Court. Fathers' attorney in California is being

disciplined by the State Bar for misleading and lying to the California Court in filings submitted during the parties DVRO case. Father submitted the same documents to the Court in Arizona. Mother will be forwarding all information from the California State Bar to the Arizona State Bar for investigation. Fathers' attorney Mrs. Andrade is obligated to notify this Court of her client's false statements and fraudulent evidence previously presented to this Court. Father's fraud upon the Court resulted in a temporary order being issued. Father committed perjury over the smallest details in this case. For instance, lying about who purchased the child's school uniforms. Father attempted to manipulate the Honorable Judge Jackson and fraudulently influence the Court. Father wore his Police Uniform to Court and identifies as a Police Officer in every filing and Court proceeding when his employment is not relevant. Father identifies himself as a Police Officer instead of a Father in this domestic relations case because he knows the Honorable Judge Jackson's husband is also in Law Enforcement. Father has not only created an appearance of bias but has committed extensive, calculated fraud upon the Court!

Father has continued to stalk, harass and abuse Mother and the parties' child since they left Arizona in July/August of 2022. Mother and Child moved to California after Father kicked them out. Father physically, verbally, psychologically and financially abused Mother in front of the parties' minor child and abused the child since birth. Mother filed her first TRO against Father in September of 2022. Father evaded service from MCSO for Months even though Father knew from this Court, Mrs. Andrade, and his employer there was a TRO in place. Father continued to harass and abuse Mother and the parties' child for months while those TRO's were active. However, Mother couldn't legally do anything about Fathers abhorrent, illegal conduct because Father was clearly evading service of the TRO. More recently Mother had an active TRO against Father in California. Father hired a private investigator to hunt for

Mother which was a crime and a violation of the TRO. The TRO told Father "Not to look for protected party." Mother was actively being hunted by Father, Father's family and his private investigator! Father was also Court ordered to turn in his personal firearms. Father turned in only 1 out of his dozens of personal Firearms which placed Mother and child in even more danger! Father threatened Mother the morning of Court for the parties DVRO evidentiary hearing. Out of fear, Mother did not appear in Court. The TRO was dismissed due to Mother not attending the hearing. There is now an active criminal investigation against Father in California for dissuading a victim, witness or party to a case. These are only a few examples of how Fathers pattern of abusive conduct has not stopped since Mother and child left the violent, dangerous, abusive situation with Father.

Father has submitted fabricated evidence to this Court. Father continues to mis-quote Police Reports in his filings in his effort to mislead the Court. When Mother obtained copies of those Police Reports, Fathers "quotes" were not in the reports. Father purposefully "quotes" the reports without providing the Court with copies. In a published interview, Father told a detective that mother and the child MOVED to California. Father told this Court an ever-changing story about Mother leaving Arizona with the child under false pretenses, graduating to accusing Mother of kidnapping! Father's filings are full of contradictory statements. Furthermore, Domestic Violence Victims should not be punished with claims of unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. There are laws in the State of Arizona designed to protect Mother and Child in this circumstance. Those laws are being ignored by this Court. Mother has extensive evidence of significant domestic violence including hundreds of photos of injuries. Mother also has dozens of horrific videos of abuse. During one of those videos Father yells at mother to kill

herself in front of the minor child. Father also screams “fuck you for ever giving birth to her” referring to the parties’ child. This happens while Mother and Child are locked in the bathroom listening to Father demolishing their home while screaming for hours. On video, Father kicked Mother and their child out screaming at them to “get the fuck out.” The video shows Mother and child’s belongings broken on the filthy garage floor and in the trash. You can see baby clothes, baby bottles, baby toys, mothers’ clothes, shoes, jewelry, personal belongings, etc. destroyed in another one of Father’s violent fits of rage. In another video Father throws a plate of hot food at Mother and Baby. The child is hysterical, covered in food with marks on her body from the hot foot hitting her. Father got in Mother and Child’s face screaming, admitting on video to throwing the plate of hot food on them because Mother was “annoying him.” In another video Mother expresses her desire to call 911 because Father’s abuse is escalating, frightening her and the child. Father Intimidates Mother saying, “call 911, I dare you” and “how long do you want to live here? Think about it” (while Mother is holding the child). In another video Father screams in Mothers face and shoves her while she is holding the parties’ child. This case went to the District Attorney in Los Angeles County for domestic battery. The case was not prosecuted due to Mother’s delayed reporting, the 1-year statute of limitations had expired. See exhibit B. The FBI picked up that case along with several other incidents of interstate domestic violence committed by Father. The federal statute of limitations has not expired. Father travelling interstate to commit Domestic Violence demonstrates it’s not safe for Mother and child in Arizona. There are dozens of other videos depicting Father’s similar and worse abusive behavior. The Pinal County Sheriff’s department is investigating the incidents that happened in their jurisdiction. PCSO has narrated some of the videos they have received. See exhibit C. During communication with the Mesa Police Department Mother disclosed information pertaining to

domestic violence. The Mesa Police Department contacted the Gilbert Police Department. Attached is an email from the Gilbert Police Department where the detective served a warrant on Mothers email account. The detective found significant evidence of Domestic Violence and provided Mother with Victims Rights forms from Maricopa County Arizona which entitles Mother and Child to protection from Father under the State of Arizona law. The detective found evidence of disorderly conduct, assault and child abuse. See exhibit D. All this evidence combined equates to more than significant domestic violence. It's concerning that the Honorable Judge Jackson found Father is a "fit and proper parent." Father was only left with the child on a few occasions for short periods of time, otherwise Mother was home with the child all day, every day since birth. Mother came home from a medical appointment to Father feeding the child beer on multiple occasions. Photos of Father feeding the baby beer have been provided to this Court. Father has even filed those photos with his own evidence, that is how proud he is. See exhibit E. Mother also came home to Father giving the baby ammunition to play with while loaded, unsecured, loaded firearms were in the child's reach. After these incidents, Mother wouldn't leave the child with Father alone anymore. Father never took care of the child; he was always on vacation or spending time with his friends out drinking when he wasn't working excessively long hours. Mother has multiple police reports from different jurisdictions where Father is the suspect of domestic battery, child abuse, assault, disorderly conduct, domestic violence, endangerment and more. There are still several investigations open with multiple law enforcement agencies who are investigating Fathers abuse! Many of these pieces of evidence have already been submitted to the Court by Mother's former attorney. The Court has not made any orders to protect Mother and Child. This Court is responsible for placing an innocent child in the hands of a violent, aggressive abuser who uses alcohol and steroids while irresponsibly feeding the baby

beer while in the reach of unsecured loaded firearms! DCFS has investigated multiple times. DCFS advised Mother they will place the child into DCFS custody for failure to protect the child if the child is returned to Father. Mother is cooperating with the DCFS investigation and complying with their demands. Mother is doing everything she can to keep the child safe.

Mother and child have been in hiding since Father travelled to California committing another act of domestic abuse in February of 2023. Father called mother from a blocked number threatening to burn Mothers parents' house down (where Mother and the parties' child were residing at the time) if Mother didn't return to Arizona immediately. Father's Dad's bright blue custom pickup truck was parked up the street from Mother's parents' home which made the threat even more credible!

Mother and Child deserve to live a life free from abuse and fear. Mother and child also deserve to be protected. This Court has repeatedly demonstrated its inability or refusal to protect the victims of Fathers abuse. There are substantial laws in the State of Arizona to protect Mother and Child victims of Domestic Violence. Those laws are not being followed by this Court. Mother and child are being failed by the system that is designed to protect victims like them. This injustice began with the lack of a proper UCCJEA conference and went downhill from there.

Furthermore, Father has avoided any financial responsibility for this child. Father hasn't participated financially in well over a year. Father's conduct of stalking over the past year has caused Mother and child to move multiple times for their safety. In the most recent stalking incident, Father's associates were parked outside Mother's apartment. Mother has been receiving death threats from other members of Fathers Police Department for participating in the FBI and DOJ investigations involving the misconduct and corruption within the Mesa Police Department.

Mother feared for her and the child's safety and had to move again. Fathers stalking, harassment and continued abuse are causing financial hardship for Mother.

Mother requests this Court grant her motion requesting a UCCJEA conference in accordance with Arizona Law, provide the parties proper notice, and hold an evidentiary hearing considering all the factors set forth in accordance with Arizona's UCCJEA statutes. See A.R.S. 25-1001 to 1067. The Arizona statute language uses the phrase "shall consider" when referencing the Court's duty to consider the enumerated factors. Therefore, this Court is obligated to consider all the factors set forth in A.R.S. 25-1037(B) and make factual findings on the record. See *Ins. Co. of N. Am. V. Superior Court in & for the County of Santa Cruz, 166 Ariz.. 82, 85, 800 P.2d 585, 588 (1990)* ("shall indicates a mandatory intent by the legislature"). Consideration of all eight listed factors in A.R.S. 25-1037(B) is mandatory. See *McAndrews, 171 N.H. 214, 193 A.3d 834 (2018).* "To ensure that the Court's decision-making process was guided by the statutory requirements" the trial Court must "make specific findings either in writing or orally on the record demonstrating that the Court has considered all of the factors." See *Murillo V. Murillo, 300 Ga. App. 61, 684 S.E.2d 126, 128 (2009).* Also See. *McAndrews, 193 A. 3d at 841-42* (finding that the trial Court's failure to address each specific factor UCCJEA required by was an abuse of its discretion). The prior UCCJEA conference held in this case was insufficient for effective appellate review. This Court failed to create a proper record under A.R.S. 25-1010(D).

Mother is also requesting a stay until a proper UCCJEA conference is held. This Court did not have the Jurisdiction to make any additional orders without holding a proper UCCJEA conference. Therefore, any orders made by this Court without a proper Jurisdictional ruling are unlawful and should be vacated. A Judgment is a void judgment if the Court that

rendered the Judgment lacked jurisdiction of subject matter, or of the parties, or acted in a manner inconsistent with due process. See. *United States v. Berke, 170 F.3d 882, 883 (9th Cir. 1999).* The Judgment is void because it was not entered in accordance with due process of law. Procedural due process requires notice and an opportunity to be heard. See *United Student Aid Funds, Inc. V. Espinosa, 559 U.S. 260, 272 (2010*).

Respectfully Submitted

On this 28th day of August 2023.

Erin Gerlach

COPY of the foregoing e-filed
this 28th day of August 2023 with

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